MT LEGISLATIVE HISTORY

Chapter 14 1963

Bill H 32 S _____ Original bill & hist. ___C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Jan 09	✓C	Hearing Date(s) Jan 16	✓C
_____	___C	Jan 21	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Jan 09	✓C	Jan 21	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

January 9, 1963

JUDICIARY COMMITTEE

Meeting of the House Judiciary Committee was held at 10:00 on Wednesday, January 9, 1963. Chairman Haughey presided.

Upon roll call all members of the committee were present.

The business first in order was consideration of House Bills No. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34. The motion was made by Rep. Bradford and seconded by Rep. Dykstra that these bills Do Pass. Motion carried.

House Bill No. 38 was then taken up. Rep. Keller stated that he had been in accord with the County Probation Officials in his county and others in stating the need for this bill. He said too that these officials are willing to come to discuss this with the committee. A sub-committee was appointed to consist of Keller, (author of the bill); McNamer; and Turnage.

House Bill No. 3 will be considered in the sub-committee today.

House Bill No. 10 is being held. Mention was made of an error to be corrected regarding section number.

The committee was next asked to consider introducing as a committee bill, a bill to approve and legalize the laws of Montana as stated in the revised code. It is desirable to adopt these replacements to keep codes current. A motion was made by Rep. Dykstra and seconded by Rep. Turnage that this bill be introduced as a committee bill. Motion Carried.

Mr. Alfred Coate then appeared before the committee and stated that he, as First Assistant Attorney General, would like this committee to introduce as a committee bill, a bill to repeal a list of "deadwood" statutes. A list of these statutes is attached hereto. He also stated that there are at least four more statutes which would be included if the committee approved. These would include 72-106, 108, 109, and 110. Appearing on behalf of the Attorneys Office, Mr. Leuthold, State Examiner, the Supreme Court, and Mr. Omholt, he asked that the committee consider introducing such a bill.
The committee agreed that the bill should be redrawn and that an effort should be made to get all of these statutes which should be repealed. The bill will then be introduced by the Judiciary Committee.

JUDICIARY COMMITTEE MEETING
January 16, 1963

The meeting was called to order by Chairman Senator Mahoney. Roll was called by the secretary and all members were present and accounted for except Senator McGowan.

Chief Justice of the Supreme Court, James T. Harrison, was introduced to the committee by Senator Mahoney. Chief Justice Harrison gave a brief explanation of House Bills No. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 40. A copy of his letter is attached. A discussion followed with questions asked by the committee and answered by Chief Justice Harrison.

Mr. John C. Wilson, Registrar of Vital Statistics, was introduced to the committee by Senator Dussault. Mr. Wilson passed out record forms pertaining to submission of vital statistics information to Clerks of the District Courts with the filing of actions for divorce or annulment. He then followed with a brief discussion of Senate Bill No. 6.

The order of business then proceeded to the discussion of House Bills. Senator McElwain made a motion and was seconded by Senator Dussault that House Bill No. 23 be concurred in. The motion was carried. Senator McElwain made a motion and was seconded by Senator Gerard that House Bill No. 24 be concurred in. The motion was carried. Senator Mahoney made a motion and was seconded by Senator Cumming to reconsider the action on House Bills No. 25 and 26. The motion was carried. The same motion was made and carried on House Bill No. 27. Senator Dussault made a motion and was seconded by Senator M cElwain that House Bill No. 28 be concurred in. The motion was carried. Senator Dussault made a motion and was seconded by Senator Huntley that House Bill No. 29 be concurred in. The motion was carried. Senator Dussault made a motion and was seconded by Senator Schoonover that House Bill No. 30 be concurred in. The motion was carried. Senator Mahoney made a motion and was seconded by Senator Cumming that House Bills No. 31 and 32 will hold. Senator Schoonover made a motion and was seconded by Senator Cumming that House Bill No. 33 be concurred in. The motion was carried. Senator Dussault made a motion and was

JUDICIARY COMMITTEE MEETING
January 21, 1963

The meeting was called to order by Chairman Mahoney. Roll was called by the secretary and all members were present and accounted for except Senator McDonnell.

Pastor Walter Moris of St. John's Lutheran Church, appearing instead of Mr. Patterson, a registered lobbyist, was introduced to the committee by the Chairman. He spoke to the committee concerning his views on Senate Bill No. 31.

Representative Paul Keller from Cascade County spoke to the committe concerning his views on Senate Bill No. 9.

A discussion was held by the committee on Senate Bill No. 5. Senator Gerard made a motion and was seconded by Senator Huntley that two judicial judges from the 4th judicial district be asked to attend the January 23rd committee meeting.

Senate Bill No. 57 was set for a hearing on adjournment of the Senate session on January 23rd.

A motion was made by Senator Dussault and seconded by Senator Cumming that House Bill No. 32 be concurred in. The motion was carried.

Chief Justice Harrison appeared before the committee for a further discussion of House Bill No. 40. Senator Huntley made a motion and was seconded by Senator Dussault that House Bill No. 40, as amended, be concurred in. The motion was carried.

After a brief explanation of House Bill No. 41 by Chief Justice Harrison, Senator Cumming made a motion and was seconded by Senator Huntley that House Bill No. 41 be concurred in. The motion was carried.

Senator Cumming made a motion and was seconded by Senator Gerard that House Bill No. 46 be concurred in. The motion was carried.

Senator Dussault made a motion and was seconded by Senator McGowan that House Bill No. 79 be concurred in.

Senator Cumming made a motion and was seconded by Senator Dussault that the meeting be adjourned.

Respectfully submitted

Ernestine Hueckman

amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in *any time or savings deposits,* United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

Clerk to give notice.

Treasurer shall purchase warrants.

Treasurer shall notify clerk.

Other approved investments—maturity one year or less.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in *any time or savings deposits or in* short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments shall be credited to the *sinking fund of the* said school district or county high school, notwithstanding the povisions of subsection (6) of section 16-2618, Revised Codes of Montana, 1947.''

Investment of school construction funds.

Interest earned—school sinking fund.

Approved January 28, 1963.

CHAPTER 14

An Act to Correct a Mistaken and Inadvertent Purported Repeal of R. C. M. 1947, Section 93-2824, Known as the 'General Survival Statute' Which Was Shown as Superseded by Rule 25, M. R. Civ. P., Adopted as Chapter 13, Laws of 1961, Effective January 1, 1962; Re-Enacting Said Section 93-2824, R. C. M. 1947; and Making the Same. Retroactive to Accomplish the Purpose of Correcting the Mistake Contained in Chapter 13, Laws of 1961, Section 79, Rule 86, and Section 82, Table B, Section 83, Table C, and Section 84, and Amending Tables B and C of M. R. Civ. P. by Deleting Therefrom Reference to Section 93-2824, R. C. M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Purpose.** Under the provisions of Chapter 255, Laws of 1959, the Supreme Court of the State of Montana was authorized and empowered to have prepared and submit proposed rules of pleading, practice and procedure in civil cases in the courts of this state to the next succeeding legislative session for their consideration; that under the provisions of such chapter, a Civil Rules Commission was appointed by the Supreme Court to make a study and thereafter to submit proposed rules to the court; that thereafter and in accordance with Chapter 255, Laws of 1959, and the order of the Supreme Court, proposed new rules covering pleading, practice and procedure were submitted to and approved by the Supreme Court and transmitted to the Legislature for its consideration. Such proposed rules were adopted by Chapter 13, Laws of 1961, to be effective January 1, 1962. Inadvertently listed in the tables of statutes superseded by the new rules was section 93-2824, R. C. M. 1947, which was shown as superseded by Rule 25, M. R. Civ. P. Section 93-2824, R. C. M. 1947, dealt with substantive law in that it provided for the survivorship of certain causes of action upon death of the party, whereas Rule 25, M. R. Civ. P. provides for substitution upon the death of a party to an action in which the claim is not thereby extinguished, being purely a procedural rule and in no way carried into the rules the provisions of substantive law set forth in section 93-2824, R. C. M. 1947, and it is necessary that such mistake be corrected retroactive to the date of such inadvertant purported repeal.

General survival statute re-enacted—made retroactive to January 1, 1962—mistake in repeal corrected.

Section 2. ''93-2824. (9086) **Action—when not to abate by death, marriage or other disability—proceedings in such case.** An action, or cause of action, or defense,

Survival statute.

shall not abate by death, or other disability of a party, or by the transfer of any interest therein, but shall in all cases, where a cause of action or defense arose in favor of such party prior to his death or other disability, or transfer of interest therein, survive, and be maintained by his representatives or successors in interest; and in case such action has not been begun or defense interposed, the action may be begun or defense set up in the name of his representatives or successors in interest; and in case the action has been begun or defense set up, the court shall, on motion, allow the action or proceeding to be continued by or against his representatives or successors in interest. In case of any transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding."

Amending clause.

Section 3. Section 82, Chapter 13, Laws of 1961, being Table B of the M. R. Civ.P., is amended by deleting therefrom the reference that Rule 25 supersedes Section 93-2824, R. C.M. 1947.

Amending clause.

Section 4. Section 83, Chapter 13, Laws of 1961, being Table C of M. R. Civ. P., is amended by deleting therefrom the reference that Section 93-2824, R. C. M. 1947, was superseded by Rule 25.

Effective January 1, 1962.

Section 5. Effective date. This Act shall be retroactive and take effect as of January 1, 1962, upon its passage and approval.

Approved January 29, 1963.

CHAPTER 15

An Act to Amend Section 93-3702, R. C. M. 1947, Relating to the Verification of Pleadings.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That section 93-3702, R. C. M. 1947, be, and the same is hereby amended to read as follows:

Verification of pleadings.

"Section 93-3702. (9163). **Verification of pleadings.** *In any case in which an affidavit of verification is required, except as otherwise specifically provided, such* affidavit of verification must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters therein stated on information and belief, and that as to those he believes it to be true. Such verification must be made by the party, or, if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney resides, or is from any other cause unable to verify the pleading, and in such case the verification must state that the deponent is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information and belief of such agent or attorney. When a corporation is a party, the verification may be made by any officer thereof, and must state what officer he is, and that the matters stated therein are true to the best knowledge, information, and belief of such officer. If there is no officer of the corporation within the county, the verification may be made by its attorney."

By party.

By agent or attorney.

By officer of corporation.

Approved January 29, 1963.

CHAPTER 16

An Act Authorizing and Empowering the Supreme Court of the State of Montana to Regulate by Rules, the Pleading, Practice and Procedure in Civil Cases in the Courts of the State of Montana, for the Purpose of Simplifying Judicial Proceedings and Promoting the Speedy Determination of Litigation Upon its Merits.

Be it enacted by the Legislative Assembly of the State of Montana:

Supreme court shall promulgate rules to regulate civil procedure.

Section 1. The Supreme Court of this State shall have the power to regulate the pleading, practice, procedure, and the forms thereof in civil actions in all courts of this State, by rules promulgated by it from time to time, for the purpose of simplifying judicial proceedings in the Courts of Montana and for promoting the